CITATION: Springer v. Aird & Berlis LLP, 2010 ONCA 287
DATE: 20100420
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COURT OF APPEAL FOR ONTARIO

Sharpe, Cronk and MacFarland JJ.A.

BETWEEN

Harold S. Springer

Plaintiff (Appellant)

and

Aird & Berlis LLP

Defendant (Respondent)

Thomas Dunne Q.C. and Benjamin Na, for the plaintiff (appellant)

Linda R. Rothstein and Robert A. Centa, for the defendant (respondent)

Heard: April 14, 2010

On appeal from the judgment of Justice Frank Newbould of the Superior Court of Justice dated April 8, 2009.

By the Court:

[1] This appeal arises from a claim by the appellant against his former law firm concerning the appellant's remuneration. The claim is based upon allegations of breach of contract, negligent misrepresentation, breach of fiduciary duty and unjust enrichment.

The trial judge gave very thorough and detailed reasons for rejecting the appellant's evidence and for dismissing the claim.

[2] On this appeal, the appellant focuses exclusively on an issue that, according to the trial judge, was raised for the first time during closing argument, namely: did the respondent owe and breach a fiduciary duty to inform the appellant of where he "fit" under a new firm compensation system to be implemented in 2002 and to warn the appellant that his remuneration as a partner would be significantly reduced under that system.

[3] The appellant submits that the respondent owed and breached that duty and that he thereby suffered a loss. This contention rests on the theory that had he been warned that his compensation would be significantly reduced, he would have withdrawn from the partnership earlier and received a higher payout based on his 2001 allocation of partnership units.

[4] The trial judge found that in the light of the terms of the partnership agreement, the respondent did not owe the appellant a fiduciary duty in relation to decisions made by the firm's executive committee as to the appellant`s compensation.

[5] We agree with that finding.

[6] With respect to the specific issues raised before us on this appeal, the trial judge found that:

1. the respondent did not owe the appellant the asserted fiduciary duty;
2. even if there was such a duty, the appellant had failed to prove that that duty had been breached; and
3. in any event, the appellant was well aware of the likelihood that his share of partnership units and, hence, his income from the firm would be significantly lower in 2002.

[7] We are not persuaded that the trial judge erred with respect to any of these findings.

1. Was there a fiduciary duty?

[8] We have already referred to the trial judge's overall finding that the respondent owed the appellant no fiduciary duty in relation to the determination of his level of remuneration. The appellant does not challenge that finding.

[9] Nothing in the *Partnerships Act*, R.S.O. 1990, c. P.5 or in the partnership agreement between these parties imposes such a duty on the management of the respondent law firm. Moreover, no such duty arises at common law.

[10] The appellant relies on undertakings by the firm's executive committee that the managing partner would meet with each partner to review that partner`s likely level of income under the new compensation system.

[11] We do not agree that these undertakings gave rise to a fiduciary duty. It is well-established that not every statement or act made or done in the context of a fiduciary relationship gives rise to a fiduciary duty. Further, not every legal claim arising out of a fiduciary relationship will give rise to a claim for breach of fiduciary duty. See *Galambos v. Perez* 2009 SCC 28, at paras. 36-7. In our view, the statements or undertakings relied on by the appellant amounted to nothing more than ordinary administrative steps taken by the firm's executive committee in the management of the partnership.

[12] Accordingly, we see no basis on which to interfere with the trial judge`s finding that no fiduciary duty of the kind asserted by the appellant was owed to him.

2. If there was a fiduciary duty, was that duty breached?

[13] Nor do we see any basis to interfere with the trial judge's conclusion than even if there was a fiduciary duty, the appellant failed to establish a breach of that duty.

[14] The appellant testified that he met with the firm's managing partner (who died shortly before the appellant commenced this action) in February 2001, shortly after the units allocation for 2001 was announced. The appellant testified that the managing partner indicated her wish to conduct a formal interview with him as contemplated by the memorandum that had been sent to all partners in that regard, to explain to him where he would "fit" in the new compensation system. The appellant claimed that the managing partner told him that he would fit at the highest level under the new system.

[15] The trial judge gave detailed reasons for rejecting the appellant's evidence and found as a fact that the appellant had not been promised the level of remuneration he alleged. The appellant does not challenge that finding of fact.

[16] The respondent invited the trial judge to find that the managing partner had in fact told the appellant that his performance meant that his units would be dramatically reduced in 2002. While the trial judge found there was much to be said for this submission, in the end he was unable to draw the inference sought by the respondent. However, the trial judge also explicitly refused to make any finding that the managing partner had failed to warn the appellant that his 2002 allocation of partnership units was likely to be significantly lower than his 2001 allocation.

[17] We are unable to accept the submission that evidence of conversations the appellant had with other members of the firm's executive committee undermine the trial judge's conclusion that the appellant had failed to establish that the managing partner had not warned him about the likely level of his 2002 income. The relevant memoranda from the executive committee clearly state that the meeting to discuss the implications of the new compensation system was to be with the managing partner. It is the appellant's evidence that he in fact met with the managing partner. Given the trial judge's overall negative assessment of the appellant's credibility and his outright rejection of the appellant's account of what the managing partner told him at that meeting, it was clearly open to the trial judge to conclude that the appellant had failed to satisfy him that she had

not told the appellant that his units allocation would be significantly reduced in 2002 and that, as a result, the appellant had not satisfied the onus he bore of proving any breach of the alleged fiduciary duty.

[18] We note, in this regard, that the trial judge found that there was no evidence whatsoever that the firm's points allocations for the appellant in the years in question were undertaken or made in bad faith.

3. Was the appellant aware in any event that his remuneration would be significantly reduced in 2002?

[19] The changes in the method of allocation of partnership units among partners were well-publicized and well-known to the appellant well in advance of the actual allocation made for 2002. The trial judge found that on a plain reading of the documents relating to the new compensation system, it would have been apparent, given the nature of the appellant's practice and his contribution to the firm, that his income would be substantially reduced under the new system. Moreover, there was evidence of statements made by the appellant to other partners in 2001 that was capable of supporting the trial judge's inference that the appellant likely new that his level of remuneration would be significantly reduced in 2002.

[20] Accordingly, we are satisfied that there was a basis in the evidence for the trial judge to conclude that the appellant was aware that his partnership compensation would likely decrease in 2002. It follows that even if there was a fiduciary duty as asserted by

the appellant, and even if that fiduciary duty was breached by the respondent, it did not cause any loss to the appellant.

Disposition

[21] Accordingly, the appeal is dismissed with costs to the respondent fixed in the agreed amount of $30,000, inclusive of disbursements and GST.

"Robert J. Sharpe J.A."
"E.A. Cronk J.A."
"J. MacFarland J.A."

RELEASED: April 20, 2010